

## City of College Station

### SERVICE CONTRACT

This contract is by and between the City of College Station, a Texas home-rule municipal corporation (the "City"), and Portia Smith and Tamara Jackson, each Individually and d/b/a The Positive and Total Difference (collectively, the "Contractor"), for the following work generally described as: Educational services provided by the contractor for classes called Decision Making For First Offenders, a service provided by the Contractor as an independent contractor.

1. In consideration of the compensation stated in paragraph 2, the Contractor shall provide all the services described in the Scope of Services attached hereto as **Exhibit "A"** and incorporated by reference. The express terms of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.
2. Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor's final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **Six Thousand Dollars and No Cents/100 Dollars \$6,000**. Within **seven (7)** calendar days of completion of the work, the Contractor shall submit his application for payment to the City, and the City shall pay Contractor for the work performed no later than **thirty (30)** calendar days from the date of the City's receipt and the City's approval of the work and the application for payment.
3. No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the City. The Contractor shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project.
4. Written change orders may be approved by the City Manager or his delegate provided that the change order does not increase or decrease the amount set forth in paragraph two of this Contract by more than \$50,000.00. Changes in excess of this amount must be approved by the City Council prior to commencement of the services or work. **Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in paragraph 2 of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.**
5. **Time is of the essence on this Contract.** The Contractor shall complete all work under this Contract by the dates set forth below:

July 31, 2002

6. No "Notice to Proceed" may be given nor any work commenced until this Contract is fully executed and all exhibits and other attachments are completely filled out and attached hereto.

7. It is understood and agreed by the parties that the Contractor is an independent contractor retained for the above-mentioned purpose. The City shall not control the manner nor the means of the Contractor's performance, but shall be entitled to a work product as described above. The term "subcontractor" shall mean and include only those hired by and having a direct contact with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The City will **not** be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

8. OPTION - SELECT A OR B (initial) *(both A & B shall apply if contract amount is over \$15,000.00)*

☒ A.

The Contractor shall procure and maintain, at its sole cost and expense for the duration of this Contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, volunteers, employees, or subcontractors. Said insurance shall list College Station, its employees, and officials as additional named insureds. See **Exhibit B** for required limits of insurance. Certificates of insurance evidencing the required insurance coverages shall be attached hereto as **Exhibit C**.

- OR -

☐ B.

It is further agreed that the Contractor (separately and collectively the "Indemnatee") shall indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by the Contractor under this Contract. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the Contractor, or any third party.

9. The Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action

**are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party.**

10. The City is exempt from payment of state and local sales and use of taxes on labor and materials incorporated into the project. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resale the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

11. The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control Act (IRCA). The Contractor may not knowingly obtain the labor or services of an unauthorized alien. The Contractor, not the City, must verify eligibility for employment as required by IRCA.

12. At any time, the City may terminate the Project for convenience, in writing. At such time, the City shall notify Contractor, in writing, who shall cease work immediately. Contractor shall be compensated for the services performed. In the event that the City terminates this Contract for convenience, the City shall pay Contractor for the services performed and expenses incurred prior to the date of termination.

13. No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver or deferral of any other term or condition or subsequent wavier or deferral of the same term or condition.

14. This Contract may only be amended by written instrument approved and executed by the parties.

15. This Contract and the rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of City.

16. The parties hereby state that they have read the terms of this Contract and hereby agree to the conditions contained herein.

17. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

18. Contractor, its employees, associates or subcontractors shall perform all the work hereunder. Contractor agrees that all of its associates, employees, or subcontractors who work on this Project shall be fully qualified and competent to do the work described hereunder. Contractor shall undertake the work and complete it in a timely manner.

19. If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of

competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

20. This Contract represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

21. This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.

**Portia Smith and Tamara Jackson, each Individually and d/b/a  
The Positive and Total Difference**

By: Portia Ophelia Smith

**Portia Smith, Individually and d/b/a The Positive and Total Difference**

Title: Owner, d/b/a The Positive and Total Difference

8/30/01  
Date

By: Tamara Jackson

**Tamara Jackson, Individually and d/b/a The Positive and Total Difference**

Title: Owner, d/b/a The Positive and Total Difference

8/30/01  
Date

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Lynn McIlhaney, Mayor

**ATTEST:**

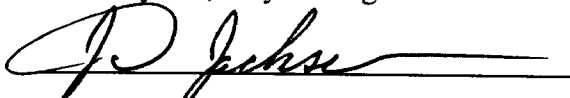
\_\_\_\_\_

Date: \_\_\_\_\_

Connie Hooks, City Secretary

**APPROVED:**

\_\_\_\_\_  
Tom Brymer, City Manager

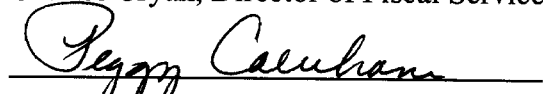
  
\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

9-4-01

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles Cryan, Director of Fiscal Services

  
\_\_\_\_\_  
Peggy Calliham, Teen Court Coordinator

\_\_\_\_\_  
Date

8/30/01

\_\_\_\_\_  
Date

STATE OF TEXAS

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**ACKNOWLEDGMENT**

COUNTY OF BRAZOS

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This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2001, by Lynn McIlhaney, Mayor of the **City of College Station**, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public in and for  
the State of Texas

STATE OF TEXAS

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**ACKNOWLEDGMENT**

COUNTY OF BRAZOS

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This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2001, by Portia Smith and Tamara Jackson, each Individually and d/b/a The Positive and Total Difference.

\_\_\_\_\_  
Notary Public in and for  
the State of Texas

## Exhibit A

### SCOPE OF SERVICES

#### Scope of Services

#### Program "Decision Making for First Offenders"

The purpose of this program is to give minors who have not had more than one prior encounter with the criminal justice system an opportunity to identify their own values, acknowledge short and long term goals, and put into a written LIFE PLAN, a means and time frame for achieving their goals. This is intended to demonstrate for minors who are at a crossroads how they can map out their future. if they make positive choices.

This program will target minor first/second offenders who are referred as part of their Municipal or Teen Court probationary sentence.

Classes will meet on designated Saturdays for a full day of training by two trained Brazos County Juvenile Probation Officers. Class maximum will be twenty defendants between the ages of 12-18 years of age. Trainers will be paid based upon a rate of \$60 per defendant participating, not to exceed **\$6,000 annually**. Funds must be expended before **July 31, 2002**.

Program scope and content will include:

- ◆ A pre and post test to serve as a benchmark
- ◆ Identification of core values
- ◆ Discussion of the attitude and its effect on values
- ◆ A personality inventory
- ◆ Discussion of negative vs. positive choices
- ◆ Identification of short and long term goals
- ◆ Discussion as to how to reach goals
- ◆ A written LIFE PLAN for achievement
- ◆ Discussion of finding life's purpose
- ◆ Evaluation forms for this class by participants and trainers

## Exhibit B

### INSURANCE REQUIREMENTS

1. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it.
2. The Contractor shall include all subcontractors as additional insureds under his policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
3. **All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as Exhibit C, and approved by the City *before* work commences.**
4. The following standard insurance policies shall be required:
  - (a) Commercial General Liability Policy
5. Except as noted, the following general requirements are applicable to *all* policies:
  - (a) General Liability insurance shall be written by a carrier with an A:VIII or better rating in accordance with the current Best Key Rating Guide.
  - (b) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
  - (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a "per occurrence" basis for property damage only.
  - (d) "Claims Made" Policies will not be accepted.
  - (e) The City of College Station, its officials, employees, and volunteers, are to be added as "Additional Insureds" to the Commercial General Liability. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.
  - (f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of College Station.
  - (g) Upon request, certified copies of all insurance policies shall be furnished to the City of College Station.

6. The following **Commercial General Liability** will be required:
- (a) Minimum Combined Single Limit of \$600,000 per occurrence for Bodily Injury and Property Damage.
  - (b) Coverage shall be at least as broad as Insurance Service's Office form number CG 00 01.
  - (c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
  - (d) The coverage shall include but not be limited to the following: premises/operations; independent contracts; products/completed operations; and contracted liability (insuring the indemnity provided herein).
7. **Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent.** The certificate shall contain provisions warranting the following:
- (a) The company is licensed and admitted to do business in the State of Texas.
  - (b) The insurances set forth by the insurance company are underwritten on forms which have been approved by the Texas State Board of Insurance or ISO.
  - (c) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
  - (d) Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
  - (e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.



**Exhibit C**

**CERTIFICATES OF INSURANCE**

See attached insurance certificate.